



FEDERAL ELECTION COMMISSION
Washington, DC 20463

VIA UPS OVERNIGHT DELIVERY AND E-MAIL

Stuart N. Kaplan, Esq.
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RE: MUR 6528 (Michael Grimm for Congress, *et al.*)

Dear Mr. Kaplan:

On February 9, 2012, the Federal Election Commission notified your clients, Michael Grimm for Congress and Nancy H. Watkins in her official capacity as treasurer (the "Committee") and Michael Grimm, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint was forwarded to your clients at that time.

On April 24, 2015, the Commission notified you that it found that there is reason to believe that the Committee may have knowingly accepted reimbursed contributions and inaccurately reported the true source of those receipts in violation of 52 U.S.C. §§ 30104(b), 30116(f), and 30122.¹

Upon further review of the allegations contained in the complaint, information supplied by the Committee, and information that the Commission obtained in the normal course of carrying out its supervisory responsibilities, the Commission, on October 5, 2015, found that there is reason to believe that the Committee and Michael Grimm knowingly and willfully violated 11 C.F.R. § 110.20. In addition, the Commission took no action on the allegations that Michael Grimm knowingly and willfully violated 52 U.S.C. §§ 30116(f) and 30122, and took no further action on the previous reason to believe findings that the Committee violated 52 U.S.C. §§ 30104(b), 30116(f), and 30122. The Factual and Legal Analysis, which formed a basis for the Commission's findings, is attached for your information.

¹ On September 1, 2014, the Federal Election Campaign Act of 1971, as amended (the "Act"), was transferred from Title 2 to new Title 52 of the United States Code.

Letter to Stuart N. Kaplan, Esq.
MUR 6528 (Michael Grimm for Congress, *et al.*)
Page 2

Please note that you and your client have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to your clients as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that your clients violated the law.

If either of your clients is interested in engaging in pre-probable cause conciliation, please contact Emily Meyers, the attorney assigned to this matter, at (202) 694-1650 or (800) 424-9530, upon receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter.

This matter will remain confidential in accordance with 52 U.S.C. §§ 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that your clients wish the matter to be made public. Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.²

We look forward to your response.

On behalf of the Commission,



Ann M. Ravel
Chair

Enclosure
Factual and Legal Analysis
ment

² The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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5 **RESPONDENTS:** Michael Grimm for Congress MUR 6528
6 and Nancy H. Watkins in her
7 official capacity as treasurer
8 Michael Grimm
9

10 **I. INTRODUCTION**

11 This matter was generated by a complaint alleging that former U.S. Representative
12 Michael Grimm and Michael Grimm for Congress and Nancy H. Watkins in her official capacity
13 as treasurer ("Committee") solicited and received contributions that violated various provisions
14 of the Federal Election Campaign Act of 1971, as amended ("Act"). On April 22, 2015, the
15 Commission found reason to believe that the Committee violated 52 U.S.C. §§ 30104(b),
16 30116(f), and 30122¹ "by receiving excessive contributions and contributions made in the names
17 of others, and by misreporting those contributions in connection with Grimm's 2010 campaign
18 for U.S. Representative."² The Commission then initiated an investigation into the scope of the
19 Committee's solicitation and receipt of prohibited contributions.

20 The information obtained in the Commission's investigation reflects that, between 2009
21 and 2010, Grimm solicited or played an active role in the solicitation of contributions from
22 several individuals whom he knew to be foreign nationals and directed some of those individuals
23 to use intermediaries to disguise the true source of the contributions.

¹ On September 1, 2014, the Act was transferred from Title 2 to new Title 52 of the United States Code.

² Certification ¶ 1, MUR 6528 (Apr. 23, 2015).

II. FACTUAL AND LEGAL ANALYSIS

A. Procedural History

According to the Complaint, during Grimm's 2010 campaign to represent New York's 13th Congressional District in the U.S. House of Representatives, Grimm solicited and the Committee received excessive, foreign national, and false-name contributions from members of Mosdot Shuva Israel ("Mosdot"), a religious organization led by Rabbi Yoshiyahu Yosef Pinto with a large presence in the District.³

The Commission held this matter in abeyance from November 2012 to April 2015. During that period, Grimm, Ofer Biton (a senior aide to Pinto), and Diana Durand (Grimm's then-girlfriend and a fundraiser for the 2010 campaign), each entered guilty pleas in the U.S. District Court for the Eastern District of New York to certain criminal violations.⁴ Only Durand was charged with violations of the Act.

B. Factual Background

Evidence obtained during the Commission's investigation reflects that, from the inception of his 2010 candidacy, Grimm solicited or played an active role in the solicitation of contributions from several foreign nationals and directed some of those individuals to effect contributions through intermediaries. At this time, one such action by Grimm remains actionable

³ Compl. ¶ 5 (Feb. 6, 2012) (citing Alison Leigh Cowan and William K. Rashbaum, *Rabbi's Followers Cast Doubt on Congressman's Fund-Raising*, N.Y. TIMES, Jan. 28, 2012, at A1) (attached to the Complaint as Exhibit 1).

⁴ Factual Basis for Guilty Plea, *United States v. Grimm*, 1:14-cr-00248 (E.D.N.Y. Dec. 23, 2014); Criminal Cause for Guilty Plea, *United States v. Biton*, 1:13-cr-00580 (E.D.N.Y. Aug. 16, 2013); Minute Entry, *United States v. Durand*, 1:14-cr-00247 (E.D.N.Y. Sept. 3, 2014) (Defendant "withdraws a previously entered plea of not guilty and enters a plea of guilty to count two of the indictment. The court accepts the plea and the defendant is adjudged guilty.").

1 within the relevant limitations period. The Commission relies on the following facts in support
2 of its finding as to that particular violation.

3 In 2009, a foreign national identified as Contributor #1 met with Grimm to explain his
4 difficulties in obtaining immigration status in the United States and offered to contribute to
5 Grimm's campaign.⁵ Grimm informed Contributor #1 that as a foreign national he could not
6 contribute to the Committee, but that he could provide the funds to third parties who in turn
7 could make the contribution to Grimm's campaign.⁶ Grimm told Contributor #1 that he would
8 attempt to help him obtain immigration status in the United States if he contributed.⁷
9 Approximately one week later, Contributor #1 provided Grimm with contribution checks made
10 in the names of four others using Contributor #1's funds and totaling approximately \$20,000.⁸
11 Grimm told Contributor #1 that he would help him with his immigration issues.⁹

12 Subsequently, on October 17, 2010, Grimm sent an e-mail to Rabbi Pinto (via his spouse)
13 requesting that he ask for a \$10,000 contribution to the New York State Republican Committee
14 from Contributor #1, the same foreign national from whom Grimm previously solicited
15 contributions to the Committee, and seven other individuals.¹⁰ The e-mail states in relevant part:

⁵ Ford Aff. in Support [of] Search Warrant ¶¶ 5-8, 13-M-561 (E.D.N.Y. June 27, 2013) ("Search Warrant #1").

⁶ *Id.* ¶¶ 7-8.

⁷ *Id.* ¶ 8.

⁸ *Id.* ¶ 9; Michael Grimm for Congress, 2009 Year-End Rpt. (Jan. 30, 2010).

⁹ Search Warrant #1 ¶ 9.

¹⁰ *Id.* ¶ 23; E-mail from Michael Grimm (Oct. 17, 2010) ("Grimm Oct. 17 E-Mail"). Grimm relied on Biton and others to translate Grimm's spoken and written communications with Pinto into Hebrew, because Pinto speaks no English.

1 I need your help with the last donations before next week. Last time we
2 raised money it was very difficult and we worked very hard and the Rabbi
3 agreed to help raise an additional \$125,000 for this time but I know he has
4 too much to do and is dealing with very stressful times. I can get the rest
5 if you and the Rabbi can help me get the last \$60,000 less than half what
6 the Rabbi originally promised.
7

8 Please, I must have at least this \$60,000 to pay for the TV commercials for
9 the last week before the election. I am working so hard to make up the
10 difference from the \$125,000. This time we only need 3 married people
11 that can write \$20,000 each or 6 people to write \$10,000 each because
12 now the money can go to the New York State Republican Committee and
13 the rule is not \$4,800 but \$10,000.
14

15 [Contributor #1] can do \$10,000. . . .
16

17 Whoever we can get from this list to make \$60,000 right away please.
18 Check is made out to: New York State Republican Committee[.]
19

20 Please ask them to fedex the checks to ... [Mosdot] and I will ... pick
21 them up.¹¹
22

23 The next day, October 18, 2010, Grimm followed up with Rabbi Pinto (via his spouse),
24 repeating his request that he contact Contributor #1 and others to fund "TV commercials"
25 before his election and again stressed the urgency of the request:

26 Please let me know if you reviewed my e-mail and if you called anyone on
27 the list. We have very little time as I need to start collecting checks as
28 soon as today or tomorrow.
29

30 I think that if the Rabbi calls the six people and asks them to each write
31 one check for the \$10,000 then we can finish this in the next few days.
32

33 Please e-mail me back and let me know if and when those calls will be
34 made. I need to send money to the cable TV for the commercials so this is
35 extremely important. . . .
36

37 The last thing I need to do is raise \$190,000 for the 2 weeks of TV
38 commercials and direct mail. I can raise \$120-\$130 but I must have the

¹¹ Search Warrant #1 ¶ 23; Grimm Oct. 17 E-Mail.

1 other \$60,000 as soon as possible. Please e-mail me back as I am very
2 nervous and concerned about the final amounts of money

3
4 Please e-mail or call me as soon as possible and let me know if the Rabbi
5 spoke to anyone on the list for the checks.¹²
6

7 Around the same time period as Grimm's e-mails, in October 2010, several
8 members of Mosdot donated tens of thousands of dollars to the New York State
9 Republican Committee's federal account.¹³

10 **C. Legal Analysis**

11 The Act and Commission regulations prohibit candidates, committees, and their agents
12 from soliciting, accepting, or receiving a contribution from a foreign national.¹⁴ Commission
13 regulations define "solicit" as "to ask, request, or recommend, explicitly or implicitly, that
14 another person make a contribution, donation, transfer of funds, or otherwise provide anything of
15 value. . . . A solicitation may be made directly or indirectly."¹⁵ Furthermore, Commission
16 regulations prohibit someone from knowingly providing substantial assistance in the solicitation,
17 making, acceptance, or receipt of a contribution from a foreign national.¹⁶

18 The record reflects that Grimm knew that Contributor #1 was a foreign national: when he
19 met Contributor #1 in 2009, Grimm offered to help him obtain immigration status in the United
20 States in return for contributing to Grimm's campaign and directed Contributor #1 to use
21 intermediaries because Contributor #1 was a foreign national. Furthermore, there is reason to

¹² E-mail from Michael Grimm (Oct. 18, 2010) ("Grimm Oct. 18 E-Mail").

¹³ See N.Y. State Republican Comm. Am. 2010 Post-General Rpt.

¹⁴ 52 U.S.C. § 30121(a)(2); 11 C.F.R. § 110.20(g).

¹⁵ 11 CFR § 300.2(m); see *id.* § 110.20(a)(6).

¹⁶ *Id.* § 110.20(h).

1 believe that Grimm violated Commission regulations by providing Contributor #1's name to
2 Rabbi Pinto and requesting that he solicit a \$10,000 contribution from that individual in his
3 October 17 and 18, 2010 e-mails, and that solicitations were being directed towards, and
4 contributions were being made by, members of Mosdot at the same time Grimm was assisting
5 Rabbi Pinto's solicitation efforts.¹⁷

6 A violation of the Act is knowing and willful if the "acts were committed with full
7 knowledge of all the relevant facts and a recognition that the action is prohibited by law."¹⁸ The
8 facts here satisfy that standard, as demonstrated by Grimm expressly instructing Contributor #1
9 and other foreign nationals that they could not contribute unless they concealed the true source of
10 their contributions by using intermediaries to make them. Consequently, because Grimm was
11 aware that any soliciting or receiving of contributions from foreign nationals was prohibited, his
12 violation here was knowing and willful.

13 Based on this evidence, the Commission finds reason to believe that Grimm and Michael
14 Grimm for Congress and Nancy H. Watkins in her official capacity as treasurer¹⁹ knowingly and
15 willfully violated 11 C.F.R. § 110.20.

16 The Commission, however, takes no action on the allegations that Grimm violated
17 52 U.S.C. §§ 30122 and 30116(f) in light of the statute of limitations on any relevant conduct

¹⁷ 11 C.F.R. § 110.20. There is a sufficient basis to find reason to believe that the solicitation of Contributor #1 that Grimm requested in his e-mails was made by Pinto because the available information shows that Pinto previously had solicited contributions for Grimm, and that Contributor #1, as a foreign national, previously had used straw donors to conceal that he was the true source of such contributions.

¹⁸ 122 Cong. Rec. 12,197, 12,199 (May 3, 1976).

¹⁹ Nancy H. Watkins was not the designated treasurer of Michael Grimm for Congress at the time of the activities at issue.

- 1 and for the same reasons takes no further action on its previous findings that there was reason to
- 2 believe Michael Grimm for Congress and Nancy H. Watkins in her official capacity as treasurer
- 3 violated 52 U.S.C. §§ 30104(b), 30116(f), and 30122.

UNCLASSIFIED